



State of Arizona  
Department of Education

**Tom Horne**  
Superintendent of  
Public Instruction

**NSLP CN # 20-08**  
**USDA Memo # SP 15-2008**

**MEMORANDUM**

**TO:** School Health & Nutrition Program Sponsors

**FROM:** Mary Szafranski, Deputy Associate Superintendent  
Arizona Department of Education, Health and Nutrition Services

Nicholas Dunford, Finance Director  
Arizona Department of Education, Health & Nutrition Services

**DATE:** April 10, 2008

**SUBJECT:** Allowability of Procurement Fees in Local Educational Agency's (LEA) Contracts

*Original Signed*

The United States Department of Agriculture (USDA) released their final rule SP 09-2008 in October 31, 2007 regarding procurement requirements which had the following regulations:

- 1) requires that the Arizona Department of Education (ADE) review and approve all Requests for Proposals (RFP) and Contracts for Food Service Management Companies (FSMC) prior to execution;
- 2) requires all goods that are funded from the nonprofit school food service account be procured appropriately; and
- 3) requires all invoices from a FSMC be detailed with total cost minus all rebates, credits, and discounts;

In response to confusion arising from point three (3) above, USDA released clarification in memorandum SP 15-2008. The memo clarifies that any fees (including procurement fees) that are directly tied to the amount of the discounts, rebates, and credits that should be returned to the LEA are an unallowable cost. The USDA has determined that this practice undermines the intent of the new regulation to return some or all of the discounts, rebates, and credits to the LEA.

LEAs may, however, continue to develop solicitations and contracts with FSMCs that allow management and/or administrative fees that include procurement services. The procurement fee could be a separate fee or part of another contract fee, as long as it remains fixed.

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For current contracts that pre-date the effective date of November 30, 2007, procurement fees are allowable, even if they are tied directly to the amount of discounts, rebates, and credits to be returned to the LEA, as long as they were properly documented in the RFP.

If you have questions or concerns regarding this memo, please contact Kristine Anderson at 602-542-6208 or email at [Kristine.Anderson@azed.gov](mailto:Kristine.Anderson@azed.gov).

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